

# **Exhibit 12**

August 29, 2022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HERMES INTERNATIONAL and HERMES OF  
PARIS, INC.,

PLAINTIFFS,

-against-

Case No.:  
22-cv-00384  
(JSR)

MASON ROTHSCHILD,

DEFENDANT.

-----X

DATE: August 29, 2022  
TIME: 8:30 A.M.

- CONFIDENTIAL -

REMOTE DEPOSITION of SCOTT DUKE  
KOMINERS, Ph.D., taken by the Defendant,  
pursuant to a notice and to the Federal  
Rules of Civil Procedure, held remotely via  
Zoom Videoconference, before Suzanne  
Pastor, a Notary Public of the State of New  
York.

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1 A P P E A R A N C E S:  
2 (All appearances via Zoom)

3 BAKER HOSTETLER  
4 Attorneys for the Plaintiffs  
5 Key Tower  
6 127 Public Square, Suite 2000  
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8 BY: DEBORAH A. WILCOX, ESQ.  
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11

12 LAW OFFICE OF LEX LUMINA PLLC  
13 Attorneys for the Defendant  
14 745 Fifth Avenue, Suite 500  
15 New York, New York 10151  
16 BY: RHETT O. MILLSAPS, II, ESQ.  
17 646.898.2055  
18 rhett@lex-lumina.com  
19

20 ALSO PRESENT:

21 GAIL WHEELER, ESQ. Hermes Paris  
22  
23  
24  
25

21 \* \* \*

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1 THE REPORTER: Good morning.

2 The attorneys participating in this  
3 deposition acknowledge that I am not  
4 physically present in the deposition  
5 room and that I will be reporting  
6 this deposition remotely.

7 They further acknowledge that  
8 in lieu of an oath administered in  
9 person, I will place the witness  
10 under penalty of perjury.

11 The parties and their counsel  
12 consent to this arrangement and waive  
13 any objections to this manner of  
14 reporting. Please indicate your  
15 agreement by stating your name and  
16 your agreement on the record.

17 MR. MILLSAPS: This is Rhett  
18 Millsaps from Lex Lumina for  
19 defendant Mason Rothschild, and we  
20 agree.

21 MS. WILCOX: I am Deborah  
22 Wilcox from Baker Hostetler here for  
23 the plaintiffs Hermes.

24 MR. MILLSAPS: I'm sorry,  
25 Ms. Wilcox, I think we need to state

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1           that we agree with her statement on  
2           the record.

3           MS. WILCOX: And yes, we agree  
4           with your remote recording. Thank  
5           you.

6       S C O T T     K O M I N E R S, called as a  
7       witness, having been first duly sworn by a  
8       Notary Public of the State of New York, was  
9       examined and testified as follows:

10      EXAMINATION BY

11      MR. MILLSAPS:

12           Q.     Good morning, Dr. Kominers.

13           A.     Good morning, Mr. Millsaps.

14           Q.     Thank you for being here today.

15       I just want to ask, have you been deposed  
16       before?

17           A.     I have not.

18           Q.     Okay, and have you ever  
19       testified under oath in any other situation  
20       before?

21           A.     I don't believe so.

22           Q.     Have you ever been involved  
23       with a trial?

24           A.     No.

25           Q.     So I just want to go over the

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1 hourly rates charged by other experts in  
2 your field?

3 A. Not that I can recall.

4 Q. Did Hermes or their lawyers  
5 give you input about what hourly rate you  
6 should charge in this case?

7 A. They did not.

8 Q. Have you worked as an expert in  
9 any other legal case?

10 A. No. Not previously, prior to  
11 this litigation.

12 Q. I'd like to turn to an exhibit.  
13 And I will put it in the chat window for  
14 the court reporter, but I'll also share my  
15 screen with it.

16 (Whereupon, Mona Lisa Image was  
17 marked as Kominers Exhibit 2 for  
18 identification as of this date by the  
19 Reporter.)

20 Q. I'm not going to be able to  
21 share the screen unless I quit Zoom and  
22 restart it apparently. It was not  
23 authorized already to share the screen.

24 MS. WILCOX: Can you e-mail it  
25 to me?

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1 (Whereupon, an off-the-record  
2 discussion was held.)

3 Q. This is Exhibit 2. Dr.  
4 Kominers, do you know what this image is?

5 A. I believe it's -- I believe so.

6 Q. What do you believe it is?

7 A. I believe it's an image of the  
8 Mona Lisa painting.

9 Q. And you are correct. I'll  
10 represent that to you.

11 MS. WILCOX: I just want to  
12 note for the record that it seems to  
13 say it's retouched.

14 MR. MILLSAPS: Yes, but that's  
15 what it is. It's an image of the  
16 Mona Lisa downloaded from the  
17 internet.

18 Q. Do you know who created this  
19 painting?

20 A. To be clear, do you mean who  
21 created the Mona Lisa or who created this  
22 image of the Mona Lisa?

23 Q. Who painted the Mona Lisa, do  
24 you know that?

25 A. I believe it was da Vinci.

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1 Q. In your opinion, is the Mona  
2 Lisa art?

3 A. I don't have opinion on this.

4 MS. WILCOX: Objection.

5 Q. You don't have an opinion?

6 A. As I said earlier, I'm not an  
7 expert in art criticism and defining what  
8 is or is not art.

9 Q. I'm not asking you as an expert  
10 in art criticism. As Scott Kominers, do  
11 you consider the Mona Lisa to be art?

12 MS. WILCOX: Objection. I just  
13 want to say you're asking for  
14 opinion. So if you're asking him as  
15 an expert opinion or if you're asking  
16 him as a non-expert opinion. That's  
17 the issue I think we're having here.

18 A. Yeah, that's the issue I'm  
19 having.

20 Q. And I just clarified that I'm  
21 not asking you as an expert in art. I'm  
22 just asking you as Scott Kominers, do you  
23 consider the Mona Lisa to be art?

24 A. Also, in the context are you  
25 asking art, like -- we already talked about



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1 art as an established term of art in the  
2 NFT market. Am I right to assume you're  
3 not talking about that specific term of  
4 art?

5 Q. I'm just talking about -- well,  
6 you have said that that's a specific term  
7 of art. We'll get to that later. But if  
8 your kid came to you and asked you if the  
9 Mona Lisa were art, what would you say to  
10 your kid?

11 A. I don't have children.

12 MS. WILCOX: Objection.

13 Q. If you had a child and your  
14 child came to you and asked you is the Mona  
15 Lisa art, daddy, what would you say to your  
16 child?

17 A. I would probably say it's sort  
18 of considered -- yes, it's considered fine  
19 art.

20 Q. And do you consider the Mona  
21 Lisa to be art personally?

22 A. I don't have a strong personal  
23 views on what is or is not art. Again, not  
24 in the NFT context, but -- under the  
25 definition I described, but in this sort of

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1 context you're asking me about now.

2 Q. Do you know where the Mona Lisa  
3 is located?

4 A. Yes.

5 Q. Where?

6 A. Or rather it's typically in the  
7 Louvre. I presume it is currently.

8 Q. And what is the Louvre?

9 A. It's a museum.

10 Q. What kind of museum is it?

11 A. Presumably an art museum.

12 Q. We can go on to the next  
13 exhibit, which I will put in the chat box  
14 for the court reporter but also share my  
15 screen.

16 (Whereupon, Warhol Campbell's  
17 Soup Cans Image was marked as  
18 Kominers Exhibit 3 for identification  
19 as of this date by the Reporter.)

20 Q. Can everyone see that?

21 A. Yes. Correction. I can see  
22 it. I don't know whether everybody else  
23 can.

24 MS. WILCOX: I can see most of  
25 it.

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1 Q. Dr. Kominers, do you know what  
2 this is?

3 A. Sorry, what "this" are you  
4 asking about? Which part of the image?

5 Q. The series of images here.

6 A. I believe so.

7 Q. What do you believe it is?

8 A. I believe they're Andy Warhol's  
9 Campbell's Soup Cans, 1961 as described in  
10 the legend.

11 Q. Have you seen it before?

12 A. Do you mean the physical piece?

13 Q. Anywhere, just these images.  
14 Online, physical, anywhere, have you seen  
15 these images before?

16 A. I've never seen this specific  
17 copy of the image, to my knowledge.

18 Q. That's not my question. Have  
19 you seen the images of Andy Warhol's  
20 Campbell's Soup cans before?

21 A. Yes.

22 Q. Where did you see those?

23 A. I don't remember.

24 Q. Have you ever been to an art  
25 museum?

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1 A. Yes.

2 Q. Why did you go to the art  
3 museum?

4 MS. WILCOX: Objection.

5 A. As with many of these things,  
6 there are many different reasons depending  
7 on the museum visit.

8 Q. Have you ever gone to an art  
9 museum to look at art?

10 A. Again -- yes, I've gone to  
11 museums to look at the works of the  
12 museums.

13 Q. But you didn't consider those  
14 works to be art?

15 MS. WILCOX: Objection.

16 A. As I said, I don't have strong  
17 personal opinions on what is and is not  
18 art.

19 Q. Would you consider Andy  
20 Warhol's Campbell's Soup cans to be art?

21 A. I know that they are displayed  
22 in art museums.

23 Q. Is that your definition of art,  
24 whether something is displayed in an art  
25 museum?

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1 A. No.

2 Q. So art is broader than just  
3 things that are displayed in art museums?

4 A. Again, speaking not  
5 specifically to the NFT context, we already  
6 talked about the term of art definition. I  
7 apologize to keep repeating that pun. I  
8 don't know what to call it other than a  
9 "term of art."

10 Yeah, as I said, I don't have a  
11 strong personal definition or expert  
12 understanding of what is or is not art.

13 Q. Earlier, correct me if I'm  
14 wrong, you said that art within the NFT  
15 context can mean imagery. Am I correct  
16 about that?

17 A. Yes. Imagery is one category  
18 of what is referenced as art in the NFT  
19 market.

20 Q. How is that different from one  
21 of the categories of art just generally in  
22 the world?

23 MS. WILCOX: Objection.

24 A. Again, so what do you mean by  
25 "categories of art generally in the world"?

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1 Q. Well, you're looking at an  
2 image here, right? A series of images  
3 painted by Andy Warhol called Campbell's  
4 Soup Cans.

5 A. Mm-hmm.

6 Q. How is that imagery different  
7 from what you mean when you say imagery in  
8 the context of art in the NFT world?

9 A. I understand the question. So  
10 again, and I'm not an expert or scholar of  
11 art, but my impression is that the imagery  
12 you are currently showing me would not be  
13 considered to be the artwork, the  
14 underlying art of the Andy Warhol piece,  
15 the individual Campbell's Soup paintings.  
16 And so one can have an image of something  
17 that's a reflection of it, for example.

18 So the image here I think is  
19 not considered an image of an artwork or  
20 what's considered an artwork.

21 Sorry, I don't know if that  
22 directly answers your question. You asked  
23 how this image is or is not -- how the  
24 concept of an image is different from the  
25 concept of art to my understanding I think.

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1 parlance?

2 A. I honestly don't know the  
3 precise origins of the term in the NFT  
4 context.

5 Q. And are you aware of Tom Sachs  
6 offering any utility in connection with his  
7 NFTs?

8 A. As I mentioned, I believe, if I  
9 recall correctly, and I'm not totally  
10 certain that I do, that there's some sort  
11 of game that one plays where you evolve the  
12 image through some process.

13 Q. Are you aware that he has held  
14 Design Your Own Rocket events within the  
15 community?

16 A. I was not.

17 Q. Are you aware -- well, I'll  
18 represent to you that he has. If he has  
19 attached certain utility with his NFT --  
20 his Rocket Factory NFTs, would that mean  
21 that they are no longer considered to be  
22 art?

23 A. Again, so what precisely do you  
24 mean in this context by "considered to be  
25 art" and what do you mean by the NFTs being

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1 considered to be art?

2 Q. The image associated with the  
3 NFT, the Rocket Factory images, would those  
4 still be considered to be art in the NFT  
5 community if he also offered utility  
6 associated with those NFTs?

7 A. So again, the use of the term  
8 "art" in the context of the NFT communities  
9 is as a reference. So it refers to the  
10 image associated, or other often digital  
11 assets associated to an NFT. So the  
12 presence of utility would not change the  
13 fact that people would refer to that image  
14 as the art associated to the NFT.

15 Q. We're going to move on to  
16 another exhibit. This will be Exhibit 5.

17 (Whereupon, Birkins Bag Image  
18 was marked as Kominers Exhibit 5 for  
19 identification as of this date by the  
20 Reporter.)

21 Q. Dr. Kominers, do you happen to  
22 recognize this image?

23 A. I do not.

24 Q. I'll represent to you that this  
25 is a recognized artist, CJ Hendry's drawing



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1 of a Birkin bag. And it's a physical  
2 drawing that this woman in the photograph  
3 here is looking at.

4 In your opinion, is this art?

5 A. As I've said, I don't have an  
6 opinion --

7 MS. WILCOX: Objection.

8 A. -- on what is or is not art.

9 Q. If this physical image were  
10 attached to an NFT, would it be considered  
11 to be art in the world of NFTs?

12 A. Can you clarify the question?  
13 Do you mean would NFT -- would people in  
14 the NFT market casually refer to the image  
15 as the art attached to an NFT? Or do you  
16 mean would they consider it to be art, like  
17 in the way that you referred to before in  
18 the context of society at presumably  
19 whatever museum this was in.

20 Q. Would NFT community members  
21 refer to this as art if it were attached to  
22 an NFT?

23 A. I suspect they would use the  
24 casual locution, the art for the NFT, yes.

25 Q. Why would you think they would

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1 refer to it as the art for the NFT?

2 A. As I said before, that's the  
3 common parlance term.

4 Q. You said it's not the common  
5 parlance term for everything that's  
6 associated with an NFT, is that right?

7 A. Yes.

8 Q. So this specifically, why would  
9 they refer to this as art?

10 A. Because that's how they refer  
11 to imagery typically that's associated with  
12 NFT.

13 Q. Is that not how people in the  
14 world also refer to imagery as art?

15 MS. WILCOX: Objection.

16 A. Again, I'm not an expert in art  
17 or art criticism. But my impression is  
18 that there's something different here.

19 Q. And what is your impression  
20 about that difference?

21 A. So again, as I've said, I  
22 think -- in the context of NFTs, the word  
23 "art" is a term of art that's sort of a  
24 catchall. Sort of an image that were not  
25 intended by its creator to be perceived as